

TESTIMONY OF CHARLES W. ERGEN
Chairman and Chief Executive Officer
EchoStar Communications Corporation
before the
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Chairman Stevens, Senator Inouye, and other distinguished members of this Committee, I appreciate the opportunity to appear today to discuss this important matter. My name is Charles W. Ergen, and I am Chairman and Chief Executive Officer of EchoStar Communications Corporation and its DISH Network.

A lot of people ask me, “How did EchoStar grow to become the third largest pay-TV company in the nation?”

The answer is simple: by giving consumers what they want.

Every day, we hear from DISH Network subscribers, and we pay close attention. Consumers drive us to develop cutting-edge technology, provide top-rated customer service, and offer an extensive channel lineup, all for the best value in the industry.

Lately, consumers often say they want more *control* over the television programming coming into their homes. They are concerned about television’s influence on their kids.

One way we've addressed these concerns is to provide our customers with a number of easy-to-use tools to control the programming viewed in their homes. All DISH Network set-top boxes come with "Adult Guard" software that allows parents to block entire channels and individual programs based on multiple ratings and content criteria. We were pioneers of this technology, offering powerful parental locks since we launched our service in 1996.

Using the prompts on an onscreen menu, a DISH Network subscriber can block access to one or more entire channels. Our software even allows parents to completely remove the channel numbers from their on-screen program guide. This technology not only prevents young family members from accessing the programs; it also blocks access to the title and descriptions of the program. We also developed a one-click "Hide Adult" feature that automatically removes all adult channels, saving our subscribers the time of selecting each network of adult programming.

The "Adult Guard" feature also provides consumers with the ability to block access to specific programs based on ratings, such as PG, PG-13, R, and NC-17. In addition, the software can alternatively or additionally blockout any programming that contains violence, language, nudity, sexual content or any combination of these factors.

We also recognize that our subscribers must know the "Adult Guard" functionality exists in order for the technology to be useful. For this reason, we include information about the parental controls on promotional channels available to all our customers. We also offer information on Adult Guard on our website, and in our user

guides, product brochures, and periodically in our monthly bills. In addition, we use some of the on-air ad time programmers make available to us to promote the “Adult Guard” technology, and consumers can call our customer service representatives for help in setting up the blocking technology.

Even with parental controls, consumers often say they want more *choice* over the programming they can purchase. They would like the option of purchasing a family-friendly tier. At DISH Network, we’ve considered offering such a package in the past, but programmers have never allowed it.

Thanks to the leadership of this Committee, Chairman Martin, and other members who have increased awareness of this issue, I am pleased to inform you that some programmers have finally given us carriage rights to launch a family tier of programming.

On February 1, we will launch the “DISHFamily” programming tier. For the low price of \$19.99, this new package will provide consumers with all-digital, all-family friendly programming – including many popular networks. Unlike family tiers offered by other pay television providers, the “DISHFamily” package will be available to consumers nationwide, including traditionally underserved rural areas. And at \$19.99, with no costly “buy throughs” that other providers require, “DISHFamily” is the lowest-priced family tier in America.

Because we're still working with programmers on the stations that will be included in the package, we cannot disclose the channel lineup at this time.

Unbelievably, we continue to meet resistance from some who remain unwilling to unbundle or relax penetration requirements in existing contracts. We hope that these programmers will eventually work with us to make the "DISHFamily" package a compelling choice for the consumer.

While we are confident that our family package will meet the needs of the average American family, we also recognize that some consumers want even more flexibility. There are always consumers who want more sports or more news programming, than is offered in a particular tier. And these consumers are willing to pay extra to receive these channels.

Unfortunately, the largest programmers, particularly those that own a big 4 network, have the muscle to control the way that pay television providers offer programming to consumers.

More than a decade ago, Congress granted local broadcast stations the right to demand payment from cable providers, and then ultimately satellite, in exchange for carriage. These rules have provided broadcasters, who already benefited from monopoly rights in their local market and free spectrum from the government, extraordinary leverage in their negotiations with pay television providers who need to offer big 4 network programming to compete in the market.

In negotiations, the largest programmers use their leverage to bundle their broadcast channels with other channels, forcing distributors to charge customers for channels they do not want, and to package family and adult-oriented programming in the same tier. According to the FCC's 2005 Competition Report, the media conglomerates of Disney, Viacom, NBC Universal, News Corporation, and Hearst-Argyle, who are all among the largest owners of local broadcast stations, have an ownership stake in 60% of the top 20 pay television networks. And while these media conglomerates may offer their local broadcast channels on a stand alone basis, they do so only at an astronomical price that has no basis in the market.

We are not alone in our concerns. Our competitors in the cable industry, such as small cable operators, represented by the American Cable Association, and cable overbuilders, such as RCN, experience similar problems with these programmers.

To get at this problem, Congress should create a binding arbitration process to resolve disputes that involve broadcast stations. It would have the practical effect of unbundling the negotiation of broadcast networks from other channels. During arbitration, the programming in dispute must continue to be available, thereby ensuring that consumers have uninterrupted access to important local content.

This proposal would enable this Committee to avoid unnecessary rate or content regulation that could trample on the First Amendment rights of either programmers or

pay television providers. Admittedly, it does not go as far as legislation that would provide an “a la carte” solution as some advocate, but it would immediately offset the leverage the largest programmers now wield in their retransmission consent negotiations and would result in more customized program packages for American consumers.

Chairman Stevens and Senator Inouye, I commend you for holding this important hearing, and we look forward to working with you on these matters. At DISH Network, we are proud that over 12 million subscribers rely on us every day as their pay television provider, and we will continue to promote consumer choice in the pay TV marketplace.

Thank you.